

From the INTERNATIONAL BUREAU

PCT

NOTIFICATION OF TRANSMITTAL
OF COPIES OF TRANSLATION
OF THE INTERNATIONAL PRELIMINARY REPORT
ON PATENTABILITY
(CHAPTER I OR CHAPTER II
OF THE PATENT COOPERATION TREATY)
(PCT Rules 44bis.3(c) and 72.2)

To:

BEIER, Ralph
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Akademiestrasse 7
80799 München
ALLEMAGNE

EINGEGANGEN**11. Mai 2006****v. Bezold & Sozien**

Date of mailing (day/month/year) 04 May 2006 (04.05.2006)	
Applicant's or agent's file reference 16060/PCT ps	IMPORTANT NOTIFICATION
International application No. PCT/EP2004/004982	International filing date (day/month/year) 10 May 2004 (10.05.2004)
Applicant EVOTEC TECHNOLOGIES GMBH et al	

1. Transmittal of the translation to the applicant.

The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter I).



The International Bureau transmits herewith a copy of the English translation of the international preliminary report on patentability (Chapter II).

2. Transmittal of the copy of the translation to the designated or elected Offices.

The International Bureau notifies the applicant that copies of that translation have been transmitted to the following designated or elected Offices requiring such translation:

None

The following designated or elected Offices, having waived the requirement for such a transmittal at this time, will receive copies of that translation from the International Bureau only upon their request:

AE, AG, AL, AM, AP, AT, AU, AZ, BA, BB, BG, BR, BW, BY, BZ, CA, CH, CN, CO, CR, CU, CZ, DK, DM, DZ, EA, EC, EE, EG, EP, ES, FI, GB, GD, GE, GH, GM, HR, HU, ID, IL, IN, IS, JP, KE, KG, KP, KR, KZ, LC, LK, LR, LS, LT, LU, LV, MA, MD, MG, MK, MN, MW, MX, MZ, NA, NI, NO, NZ, OA, OM, PG, PH, PL, PT, RO, RU, SC, SD, SE, SG, SK, SL, SY, TJ, TM, TN, TR, TT, TZ, UA, UG, US, UZ, VC, VN, YU, ZA, ZM, ZW

3. Reminder regarding translation into (one of) the official language(s) of the elected Office(s).

The applicant is reminded that, where a translation of the international application must be furnished to an elected Office, that translation must contain a translation of any annexes to the international preliminary report on patentability (Chapter II).

It is the applicant's responsibility to prepare and furnish such translation directly to each elected Office concerned within the applicable time limit (Rule 74.1). See Volume II of the PCT Applicant's Guide for further details.

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland	Authorized officer Yolaine Cussac
Facsimile No.+41 22 740 14 35	Facsimile No.+41 22 338 70 80

PATENT COOPERATION TREATY

PCT

INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 16060/PCT ps	FOR FURTHER ACTION	See item 4 below
International application No. PCT/EP2004/004982	International filing date (<i>day/month/year</i>) 10 May 2004 (10.05.2004)	Priority date (<i>day/month/year</i>) 09 May 2003 (09.05.2003)
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237		
Applicant EVOTEC TECHNOLOGIES GMBH		

1.	This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).																								
2.	<p>This REPORT consists of a total of 8 sheets, including this cover sheet.</p> <p>In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.</p>																								
3.	<p>This report contains indications relating to the following items:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 10%; text-align: center;"><input checked="" type="checkbox"/></td> <td style="width: 30%;">Box No. I</td> <td style="width: 60%;">Basis of the report</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. II</td> <td>Priority</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. III</td> <td>Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. IV</td> <td>Lack of unity of invention</td> </tr> <tr> <td style="text-align: center;"><input checked="" type="checkbox"/></td> <td>Box No. V</td> <td>Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VI</td> <td>Certain documents cited</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VII</td> <td>Certain defects in the international application</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/></td> <td>Box No. VIII</td> <td>Certain observations on the international application</td> </tr> </table>	<input checked="" type="checkbox"/>	Box No. I	Basis of the report	<input checked="" type="checkbox"/>	Box No. II	Priority	<input type="checkbox"/>	Box No. III	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability	<input type="checkbox"/>	Box No. IV	Lack of unity of invention	<input checked="" type="checkbox"/>	Box No. V	Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement	<input type="checkbox"/>	Box No. VI	Certain documents cited	<input type="checkbox"/>	Box No. VII	Certain defects in the international application	<input type="checkbox"/>	Box No. VIII	Certain observations on the international application
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4.	The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis.2).																								

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland Facsimile No. +41 22 740 14 35	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Date of issuance of this report 24 April 2006 (24.04.2006)</td> </tr> <tr> <td style="padding: 2px;"> Authorized officer <div style="text-align: center; font-weight: bold;">Yolaine Cussac</div> </td> </tr> <tr> <td style="padding: 2px;">Telephone No. +41 22 338 70 80</td> </tr> </table>	Date of issuance of this report 24 April 2006 (24.04.2006)	Authorized officer <div style="text-align: center; font-weight: bold;">Yolaine Cussac</div>	Telephone No. +41 22 338 70 80
Date of issuance of this report 24 April 2006 (24.04.2006)				
Authorized officer <div style="text-align: center; font-weight: bold;">Yolaine Cussac</div>				
Telephone No. +41 22 338 70 80				

PATENT COOPERATION TREATY

Translation

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

To:

Date of mailing
(day/month/year)

Applicant's or agent's file reference

16060/PCT ps

FOR FURTHER ACTION

See paragraph 2 below

International application No.

PCT/EP2004/004982

International filing date (day/month/year)

10.05.2004

Priority date (day/month/year)

09.05.2003

International Patent Classification (IPC) or both national classification and IPC

Applicant

EVOTEC TECHNOLOGIES GMBH

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/EP

Authorized officer

Facsimile No.

Telephone No.

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/004982

Box No. I

Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐

This opinion has been established on the basis of a translation from the original language into the following language

_____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐

a sequence listing

☐

table(s) related to the sequence listing

b. format of material

☐

in written format

☐

in computer readable form

c. time of filing/furnishing

☐

contained in the international application as filed.

☐

filed together with the international application in computer readable form.

☐

furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/004982

Box No. II

Priority

1. ☒ The following document has not yet been furnished:

☒ copy of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(a)).

☐ translation of the earlier application whose priority has been claimed (Rule 43bis.1 and 66.7(b)).

Consequently it has not been possible to consider the validity of the priority claim. This opinion has nevertheless been established on the assumption that the relevant date in the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43bis.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/004982

Box No. V	Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement		
1. Statement			
Novelty (N)	Claims	5, 7-17, 25, 27-33, 38, 39	YES
	Claims	1-4, 6, 18-24, 26, 34-37	NO
Inventive step (IS)	Claims	5, 7-11, 13, 14, 16, 25, 27-33, 38	YES
	Claims	1-4, 6, 12, 15, 17-24, 26, 34-37, 39	NO
Industrial applicability (IA)	Claims	1-39	YES
	Claims		NO
2. Citations and explanations:			
<p>1 This opinion makes reference to the following documents:</p> <p style="margin-left: 40px;">D1: US-A-4 667 830 (NOZAKI JR TOM ET AL) 26 May 1987 (1987-05-26)</p> <p style="margin-left: 40px;">D2: US-A-5 837 858 (BRENNAN THOMAS M) 17 November 1998 (1998-11-17)</p> <p style="margin-left: 40px;">D3: US-A-5 275 951 (WROBLEWSKI MIECZYSLAW ET AL) 4 January 1994 (1994-01-04)</p>			
<p>2 INDEPENDENT CLAIM 1, and claims 34-37</p>			
<p>2.1 The present application does not meet the requirements of PCT Article 33(1) because the subject matter of claims 1 and 34-37 is not novel under PCT Article 33(2).</p>			
<p>2.1.1 Document D1 already discloses all of the features of independent claim 1 (references in parentheses relate to this document): sample depositing device, particularly for a cell sorter (column 1, lines 45-49), comprising</p>			

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/004982

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

- a sample supply (38, 39) for supplying samples to be deposited (column 3, lines 14-28; column 3, lines 42-46, figure 1),
- a sample storage element (36) for storing the samples, said sample storage element (36) having a number of sample containers for storing the samples separately (column 3, lines 42-44),

characterized in that

the sample storage element (36) is mounted in a displaceable manner in order to select a sample container whereas the sample supply (38, 39) is stationary (column 2, lines 15-38; column 3, lines 42-44; column 8, line 60 - column 9, line 6; column 13, lines 11-36, figure 1).

2.1.2 In addition to claim 1, claim 34 contains the technical feature of a cell sorter comprising the sample depositing device according to any of the preceding claims. D1 describes a cell sorter having a sample depositing device according to claim 1 (see text segments cited under 2.1.1). D1 therefore anticipates all of the features of claim 34.

2.1.3 Claim 35 relates to a particle manipulator having a sample depositing device according to any of claims 1-33. The feature of manipulating particles, namely with the aid of the electric field of the sorter (column 3, lines 29-46 and text passages cited above,

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/EP2004/004982

Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

under section 2.1.1).

2.1.4 Claim 36 relates to a fluidic system having a sample depositing device according to any of claims 1-33 (not to a microfluidic system). D1 likewise describes a fluidic system (see text segments cited above, under 2.1.1).

2.1.5 Claim 37 relates to a sample depositing process, in particular for depositing samples in a cell sorter, comprising the following steps:

- positioning of a sample supply (38) relative to a sample storage element (36),
- dispensing the sample to be deposited from the sample supply (38) into the sample storage element (36),

characterized in that the sample supply (38) is stationary whereas the sample storage element (36) is displaced. The text segments cited under 2.1.1 have already disclosed the technical features of this claim.

3. Dependent claims 2-4, 6, 12, 15, 17-24, 26 and 39 do not contain any features which, in combination with the features of any claim to which they refer, meet the PCT requirements for novelty and inventive step, see documents D1-D3, with D2 and D3 relating to the following subject matters:

D2: to an apparatus for oligonucleotide synthesis, wherein a reagent dispensing

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

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Box No. V

Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability;
citations and explanations supporting such statement

apparatus, which is also suitable for
dispensing samples, dispenses said reagents
into a microtitre plate displaceable in a
gliding manner,
D3: to a sample dispensing apparatus displaceable
by a three-axis robot and also to a reaction
plate having a multiplicity of wells and
likewise displaceable by said 3D robot,
and the corresponding passages indicated in the
search report.